2014 Pacific McGeorge Law Review Symposium

The Long Overdue Reform of California’s Sentencing Practice and Policy

Sponsored by the McGeorge Law Review and the Capital Center for Public Law & Policy at the University of the Pacific, McGeorge School of Law.
ABOUT THE SYMPOSIUM

Ten years ago, McGeorge School of Law hosted a symposium on reforming California’s sentencing scheme that resulted in a report co-authored by several prominent scholars outlining a proposal for reforming California’s sentencing scheme. Since then, Clark Kelso, one of the organizers of that symposium, has been at the center of the controversy over sentencing reform in his role as the California Correctional Health Care Receiver for the state’s prison health care system. A decade later, California is on the verge of addressing the unsustainable reliance on prison as its solution to crime. It is time to revisit reforming California’s sentencing practice and policy.
PROGRAM

8:30 a.m. — Registration Opens

9 a.m. to 9:15 a.m. — Welcome & Introductory Remarks
Francis J. Mootz III, Dean & Professor of Law Pacific McGeorge School of Law

9:15 a.m. to 10:45 a.m.
Panel 1
Moderator - Clark Kelso, Associate Dean, Professor of Law, Pacific McGeorge School of Law

Reforming California Sentencing Practice and Policy: Are We There Yet?
• Michael Vitiello, Distinguished Professor of Law, Pacific McGeorge School of Law

Substance and Procedure in the Reform of Criminal Sentencing
• Franklin E. Zimring, William G. Simon Professor of Law, Berkeley School of Law

The Congress, the Courts, and the Structural Injunction: From Prison Reform to Sentencing Reform
• Brian Landsberg, Distinguished Professor of Law, Pacific McGeorge School of Law

11:00 a.m. – 12:30 p.m.
Panel 2
Moderator - Leslie Jacobs, Capital Center for Public Law & Policy Director and Professor of Law, Pacific McGeorge School of Law

Reforming the California Division of Juvenile Justice: Lessons Learned
• Barry Krisberg, Director of Research and Policy, Berkeley School of Law

Redesigning Sentencing: Can Design Thinking Help California Finally Create a Sentencing Commission?
• W. David Ball, Assistant Professor of Law, Santa Clara School of Law

Re-envisioning California Habeas Corpus as a Mechanism for Reducing Over-Incarceration
• Emily Garcia Uhrig, Professor of Law, Pacific McGeorge School of Law

1:45 p.m. to 3:30 p.m.
Panel 3
Moderator - Raquel Aldana, Associate Dean, Professor of Law, Pacific McGeorge School of Law

Alcohol- and Drug-free Housing: A Key Strategy in Breaking the Cycle of Addiction and Recidivism
• Susan Mandiberg, Jeffrey Bain Faculty Scholar, Professor, Lewis and Clark Law School
• Richard Harris, former Director of Oregon’s Department of Human Services Addiction and Mental Health Office

San Francisco’s Programs Reducing Recidivism
• Wendy Still, Chief Adult Probation Officer, City and County of San Francisco

The Rhetoric of Sentencing and Corrections
• Clark Kelso, Associate Dean, Professor of Law, Pacific McGeorge School of Law

New Developments in Reentry Programs
Jeffrey Beard, Ph.D. Secretary of the California Department of Corrections and Rehabilitation

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Reforming California Sentencing Practice and Policy: Are We There Yet?

Michael Vitiello, Distinguished Professor of Law, Pacific McGeorge School of Law

Abstract
A decade ago, my colleague Clark Kelso and I organized a symposium focused on reforming California’s sentencing practice and policy. The event led to a paper with contributions from a number of prominent scholars describing a blueprint for reforming California’s sentencing scheme. Buoyed by what seemed to be an incipient movement towards wholesale sentencing reform, we cited several factors pointing towards meaningful reform, including California’s budget crisis; prominent national figures and organizations proposing reform; the apparent willingness of then-Governor Schwarzenegger to take on the California Corrections and Peace Officers Association and to consider sentencing reform; and changing attitudes among Californians, suggesting their support for reform.

Had you asked us a decade ago whether reform would take ten years, we would almost certainly have said no. Despite that, a decade later, we remain committed to the goal of sentencing reform and believe that California still has a reasonable chance of effectuating that reform. That is the focus of this symposium.

My presentation offers a brief overview of developments over the past decade. Thereafter, it explores the role that various participants will have in the process, with an assessment of their role in advancing or blocking reform. Specifically, I will provide a snapshot of developments nationally. I will then focus on California and discusses the role of the three judge panel in Plata v. Brown and Coleman v. Brown that forced California to respond to the overuse of incarceration. Most of the presentation will focus on the various actors, including the federal judges, the legislature, governor, prison guard’s union, the California District Attorneys’ Association and the public, and assess their roles in reform. As I believed a decade ago, sentencing reform is sound policy and, despite a long gestation, can happen in California. But it is not inevitable. I will close out my remarks with a discussion of the chances of meaningful reform going awry.

Biography
Michael Vitiello is a Distinguished Professor of Law. A nationally-recognized expert on criminal law, Professor Vitiello’s many articles appear in leading journals, and his work is widely cited by scholars around the country. He is particularly well-known for his expertise on matters involving sentencing reform, and his analysis of the legal issues that would arise from the legalization of marijuana.
Substance and Procedure in the Reform of Criminal Sentencing

Franklin E. Zimring, William G. Simon Professor of Law, Berkeley School of Law

Abstract
See additional handout.

Biography
Franklin E. Zimring is the William G. Simon Professor of Law at the University of California, Berkeley Law School. His fields of expertise include youth crime and juvenile justice, criminal violence, the etiology and control of firearms violence, and the behavioral effects of crime control policy. He has served on the National Academy of Science Panels on Violence, Deterrence, and Juvenile Justice and as director of research of the Task Force on Violence of the National Commission on the Causes and Prevention of Violence. He has written on issues of youth crime and sentencing policy, penal confinement and the restraint of crime, and gun and drug control policy. Recent books include An American Travesty: Legal Responses to Adolescent Sex Offending (2004), American Juvenile Justice (2005), The Great American Crime Decline (2006) and The City That Became Safe: New York’s Lessons for Urban Crime and Its Control (2012).
The recent Supreme Court decision in Brown v. Plata illuminates the relationship of traditional structural injunctions, Congressional legislation, and prison sentences. In adopting the Prison Litigation Reform Act of 1995, Congress reacted to perceived excesses of structural injunctions remedying unconstitutional conditions of confinement in prisons. The PLRA creates procedural and substantive conditions for entry of a “prisoner release order,” but it largely replicates the law of structural injunctions and, contrary to the dissents in Plata, places toothless limits on relief. Experience under Plata suggests that the prison cases are at best a crude and indirect method of sentencing reform. Sentencing reform raises one set of policy issues and prison reform raises a different set. Yet sentencing reform may become an unintended effect of prison reform litigation.

**Abstract**

**Biography**

Brian Landsberg is a Distinguished Professor of Law and an expert in Constitutional Law. He joined the faculty in 1986, and his renowned scholarship draws upon his 22 years of experience working in the U.S. Department of Justice, Civil Rights Division. As a trial attorney, he was associate counsel in the Selma, Alabama civil rights cases. He supervised the division's Education Section for five years and headed the Appellate Section for twelve years. He now writes and lectures extensively on constitutional law and civil rights topics, and is currently working on a book about the first statewide structural injunction, which was entered by a three judge district court in Alabama in 1967 and requires desegregation of most of the school systems in Alabama. He teaches Constitutional Law. He taught Injunctions at Georgetown Law Center, concentrating on the structural injunctions in the Arkansas prison case.
Reforming the California Division of Juvenile Justice: Lessons Learned

Barry Krisberg, Director of Research and Policy, Berkeley School of Law

Abstract
Over the past decade, CA state juvenile facilities were radically downsized and solved many stark deficiencies that led to a major consent decree.

This paper reviews the major reforms and analyzes the lessons learned on this change process.

Biography
Barry Krisberg, Ph.D. is Distinguished Senior Fellow and Lecturer in Residence at the Chief Justice Earl Warren Institute on Law and Social Policy. Prior to joining the Warren Institute, Dr. Krisberg was a Distinguished Senior Fellow at the Berkeley Center for Criminal Justice. Prior to joining BCCJ, Dr. Krisberg was the President of the National Council on Crime and Delinquency from 1983 to 2009. He is known nationally for his research and expertise on juvenile justice issues and is called upon as a resource for professionals, foundations, and the media.

Dr. Krisberg teaches a course on corrections law, as well as courses on race and gender issues in the criminal justice system. Dr. Krisberg has held several educational posts. He was a faculty member in the School of Criminology at the University of California at Berkeley. He was also an adjunct professor with the Hubert Humphrey Institute of Public Affairs at the University of Minnesota and the Department of Psychiatry at the University of Hawaii.

Dr. Krisberg was appointed by the legislature to serve on the California Blue Ribbon Commission on Inmate Population Management. He is past president and fellow of the Western Society of Criminology and is the Chair of the California Attorney General’s Research Advisory Committee. In 1993 he was the recipient of the August Vollmer Award, the American Society of Criminology’s most prestigious award. The Jessie Ball duPont Fund named him the 1999 Grantee of the Year for his outstanding commitment and expertise in the area of juvenile justice and delinquency prevention. Dr. Krisberg was appointed to chair an expert panel to investigate the conditions in the California youth prisons. He has recently been named in a consent decree to help develop remedial plans and to monitor many of the mandated reforms in the California Division of Juvenile Justice. He has also assisted the Special Litigation Branch of the USDOJ on CRIPA investigations.


Dr. Krisberg received his master’s degree in criminology and a doctorate in sociology, both from the University of Pennsylvania.
Redesigning Sentencing: Can Design Thinking Help California Finally Create a Sentencing Commission?

W. David Ball, Assistant Professor of Law, Santa Clara School of Law

Abstract
Design thinking purports to take the methods of industrial and product design and apply them to social and political problems, with a particular focus on feasibility, viability, and desirability. Since 1983, more than a dozen bills have been introduced in the California legislature to establish a Sentencing Commission. All have failed. In this paper I explore how design thinking might help frame our discussion of mass incarceration in general and sentencing commissions in particular: what kinds of changes are possible within the foreseeable future, how can we make any changes sustainable, and how can we make this make sense to people. After discussing some of the ways in which we might redesign the process of designing a sentencing commission, I conclude with a substantive suggestion: that we create a separate “prison tax” line item on state tax returns. This would be trivial to implement and it would generate continued information and impetus to control the size of the prison population.

Biography
Professor W. David Ball works primarily in the field of criminal justice, writing and teaching in the areas of criminal law, criminal procedure, sentencing and corrections. His articles have been published in the Columbia Law Review, the Yale Law and Policy Review, the American Journal of Criminal Law, and the Stanford Law and Policy Review, among other journals.

Prior to becoming a full time member of the Santa Clara University School of Law faculty in 2009, Ball served as a Social Justice Teaching Fellow at Santa Clara, a Research Fellow at the Stanford Criminal Justice Center, and a law clerk for the Honorable John T. Noonan, Jr., of the U.S. Court of Appeals for the Ninth Circuit in San Francisco. Before law school he was an actor, writer, and filmmaker in New York City. He graduated with highest distinction from the University of North Carolina, where he was a Morehead-Cain Scholar, and got a second BA from Oxford University, where he was a Rhodes Scholar.

Ball is the Co-Chair of the Corrections Committee of the American Bar Association’s Criminal Justice Section, Chair of the Public Safety Working Group for Lt. Gov. Gavin Newsom’s Blue Ribbon Commission on Marijuana Law and Policy, and a member of the Advisory Board of the Bill of Rights Defense Committee. Ball is also currently the public safety working group chair of Gavin Newsom’s Blue Ribbon Commission to study the legalization of marijuana. In his spare time, he enjoys traveling, photography, and coaching his sons’ little league teams.
Re-envisioning California Habeas Corpus as a Mechanism for Reducing Over-Incarceration

Emily Garcia Uhrig, Professor of Law, Pacific McGeorge School of Law

Abstract
(Awaiting Abstract)

Biography
Professor Emily Garcia Uhrig has an extensive background in government service at the federal level. Her work as an attorney-advisor with the Office of Legal Counsel, U.S. Department of Justice; a trial and appellate Deputy Federal Public Defender in Los Angeles, CA; and as a staff attorney with the Ninth Circuit specializing in habeas corpus, has enabled her to generate some impressive scholarship. In particular, her article, “A Case for a Constitutional Right to Counsel in Habeas Corpus,” published in the Hastings Law Journal, 60 Hastings L.J. 541 (2009), has drawn praise for its in-depth analysis.
Alcohol- and Drug-free Housing: A Key Strategy in Breaking the Cycle of Addiction and Recidivism

Susan Mandiberg, Jeffrey Bain Faculty Scholar, Professor, Lewis and Clark Law School & Richard Harris, former Director of Oregon’s Department of Human Services Addiction and Mental Health Office

Abstract
See additional handout.

Biography
Susan Mandiberg is the Associate Dean of Faculty, Jeffrey Bain Faculty Scholar, and Professor of Law at Lewis & Clark Law School in Portland, Oregon. She teaches and writes on criminal law and procedure topics. She is Chair of the Board of Metropolitan Public Defender, the largest public defender agency in Oregon.

Richard Harris has an MSW from the University of Utah and was a founding employee of Central City Concern, a preeminent health and housing nonprofit in Portland, Oregon serving low-income and homeless people. After serving as Executive Director for fifteen years, Harris became Director of the Addiction and Mental Health Division of the State of Oregon, where he served for four years. He is now pursuing related community interests in retirement.
San Francisco’s Programs Reducing Recidivism

Wendy Still, Chief Adult Probation Officer, City and County of San Francisco

Abstract
(Awaiting Abstract)

Biography
Wendy Still is the Chief Adult Probation Officer of the City & County of San Francisco. Chief Still has worked in State Government for over 33 years and specialized for 26 years in Adult and Community Corrections in the State of California. Chief Still's experiences include developing gender responsive, trauma informed offender prison and community rehabilitation programs and strategic master plans designed to improve outcomes and reduce recidivism for California's offenders and parolees. Chief Still has served as Director, Activation Management and Rehabilitation Programs with the California Federal Prison Health Care Services, and Governor appointed Associate Director-Female Offender Programs & Services, Southern Regional Prison Administrator for 10 prisons, Chief of Regulation and Policy and Chief Financial Officer for the California State Department of Corrections and Rehabilitation. Chief Still is a Peace Officer and Criminologist.

Chief Still earned her Masters of Advanced Studies, Criminal, Law & Society from the University of California, Irvine. She earned her Bachelor of Science Degree in Organizational Behavior from the University of San Francisco.

Chief Still is a member of the American Probation and Parole Association, the American Correctional Association and the American Society of Criminology and has held civic positions within the State of California.
The Rhetoric of Sentencing and Corrections

Clark Kelso, Associate Dean, Professor of Law, Pacific McGeorge School of Law

Abstract
Efforts over the last 30 years to reform and improve the quality of health care in the nation's prisons and jails have been led by courts employing the power of structural injunctions to drive change. My talk will explore some of the reasons why it has been so difficult for these reforms to be implemented and take hold. At its core, the problem relates to the systemic dehumanization of inmates that seems to be an essential part of the culture of incarceration.

Biography
Associate Dean and Professor Clark Kelso has worked closely with all three branches of the California state government to improve and reform the administration of justice. In the past decade he has served as the Acting Insurance Commissioner for California, the state's Chief Information Officer, and as the federal receiver overseeing health care for California's prisons. He is also a scholar of the judicial process, publishing important pieces that have been well-received by members of the academy, as well as the bench and bar.
New Developments in Reentry Programs

Jeffrey Beard, Ph.D. Secretary of the California Department of Corrections and Rehabilitation

Abstract
California has historically had a high rate of recidivism. Some reasons for that high rate will be identified. The California Department of Corrections and Rehabilitation is taking new steps to address this issue, including working to develop the elements of an effective reentry program for the inmate population. I will provide an update of where CDCR is in the process of developing these new programs.

Biography
Jeffrey A. Beard, Ph.D. was appointed as Secretary of the California Department of Corrections and Rehabilitation by Governor Edmond G. Brown, Jr., on December 27, 2012. He will also serve as Chairman of the Prison Industry Board.

Prior to his appointment as Secretary, Dr. Beard began his criminal justice career in 1972 with the Department of Corrections in Pennsylvania (DCP) as a corrections counselor. He served in various positions within the DCP until he was appointed to Secretary by Governor Tom Ridge in January 2001. He was reappointed by Governor Ed Rendell in February 2003. He remained with the DCP until August 2010 when he retired as Secretary.

During his retirement Dr. Beard has served as a consultant and/or instructor to the National Institute of Corrections, corrections agencies and various companies on correctional matters, security, performance measures, mental health issues, evidence-based programs and assessment. Since early 2011, Dr. Beard has been a Professor of Practice with the Justice Center for Research at Pennsylvania State University. In this capacity he serves as an advisor and consultant. He was recently selected to be a member of a National Academy of Science committee studying the high rates of incarceration in the U.S.

Dr. Beard holds a B.S. in psychology, and an M.Ed and Ph.D. in counseling, all from the Pennsylvania State University. Additionally, he is a licensed psychologist. He is a member of the Pennsylvania Prison Wardens Association (PPWA), American Corrections Association (ACA), Western Association of Correctional Administrators (WACA) and the Association of State Correctional Administrators (ASCA). During his tenure as Secretary he served on the National Institute of Justice’s Law Enforcement and Corrections Technology Advisory Committee (LECTAC), the last three years of which he served as vice chair for Corrections.

Raquel Aldana, Associate Dean, Professor of Law, Pacific McGeorge School of Law
ABOUT OUR MODERATORS

Associate Dean and Professor Raquel Aldana is a prolific scholar who is an internationally recognized expert on matters of immigration law and human rights in the Americas. She is the founder and director of the Pacific McGeorge Inter-American Program, an innovative project committed to educating bilingual and bicultural lawyers who wish to pursue a domestic or transnational career with a focus on Latino or U.S Latin American relations.

Leslie Gielow Jacobs, Director, Capital Center for Public Law & Policy, Professor of Law, Pacific McGeorge School of Law
One of the law school’s preeminent scholars. A former law clerk to Supreme Court Justice Lewis F. Powell, Jr., she has authored a substantial and important body of scholarship on constitutional law, specifically free speech, government speech, and on issues of bioterrorism and national security. Her articles have appeared in law journals at many of the nation’s most prestigious law schools. She is the Director of the Capital Center for Public Law & Policy.

Clark Kelso, Associate Dean, Professor of Law, Pacific McGeorge School of Law
Associate Dean and Professor Clark Kelso has worked closely with all three branches of the California state government to improve and reform the administration of justice. In the past decade he has served as the Acting Insurance Commissioner for California, the state’s Chief Information Officer, and as the federal receiver overseeing health care for California’s prisons. He is also a scholar of the judicial process, publishing important pieces that have been well-received by members of the academy, as well as the bench and bar. Leslie Jacobs, Capital Center for Public Law & Policy Director and Professor of Law, Pacific McGeorge School of Law